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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re T.N., a Person Coming Under the
Juvenile Court Law.

LAKE COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

N.B. et al.,

Defendants;

HEATHER R. et al.,

Objectors and Appellants.

A155952

(Lake County
Super. Ct. No. JV320482)

Heather and Emily R. (the R.'s), the de facto parents of two-year-old T.N., appeal from a juvenile court order denying their posttermination petition under Welfare and Institutions Code¹ section 388 seeking T.N.'s return to their care. They claim the court abused its discretion by upholding the decision of respondent Lake County Department of Social Services (Department) not to place T.N. with them after they began caring for his newborn brother. We affirm.

¹ All further statutory references are to the Welfare and Institutions Code.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Because the circumstances leading to T.N.'s dependency are not relevant to the issues raised on appeal, we do not discuss them in detail. Briefly, after his birth in the fall of 2016, the Department filed a petition alleging that the juvenile court had jurisdiction over T.N. under section 300, subdivision (b) because both he and his mother (mother) tested positive for methamphetamines. Mother had not known she was pregnant before giving birth, and she did not know the identity of T.N.'s father.

At two days old, T.N. was detained and placed with the R.'s. The juvenile court granted their request for de facto parent status in May 2017. That November, the court terminated parental rights and ordered adoption as T.N.'s permanent plan. Shortly afterward, when he was 13 months old, T.N. left the home of the R.'s and began living with his prospective adoptive parents, his maternal grandparents, in Oregon.

Two months later, T.N. was removed from his grandparents' home because of "identified immediate safety threats toward [his] physical safety present in the home." In early February 2018, he returned to California and, "[a]fter careful assessment of available families (including the previous caretakers)," the Department placed him with a new prospective adoptive family instead of the R.'s.

The R.'s soon filed a section 388 petition seeking T.N.'s return to their care. The Department responded that it was in his best interest to stay in his current placement, noting that T.N. had adjusted well and the adoption home study of the R.'s "recorded significant mental and physical health issues for one of the applicants, past substance abuse as well as current substance use that raised concern, and marital history raising questions of relational stability."

In June 2018, after a contested hearing at which several witnesses testified, the juvenile court denied the section 388 petition because it was unable to find that the

current placement was not in T.N.’s best interest.² The R.’s sought review of this ruling, which we denied. (*In re T.N.* (Dec. 12, 2018, A154572) [nonpub. opn.].) Although “[w]e recognize[d] the loving care [the R.’s] provided to T.N.,” we concluded that the juvenile court “did not abuse its discretion in deferring to the Department’s placement decision.” (*Ibid.*)

Meanwhile, in October 2018, the R.’s filed another section 388 petition in which they renewed their request for T.N. to be returned to their care. Mother had given birth to T.N.’s brother, K.T., in July, and the R.’s had obtained legal guardianship and begun the process of adopting him. On December 3, the juvenile court denied the petition, again finding that it did not have a sufficient basis to overturn the Department’s placement decision. This appeal followed.

II. DISCUSSION

The sole claim of the R.’s on appeal is that the juvenile court erred by denying their second request for T.N. to be returned to their care. Although we continue to recognize that the R.’s provided loving care to T.N. for the first 13 months of his life, and we accept their claims that they would properly care for T.N. and he would benefit by growing up with his brother, we cannot conclude that the court abused its discretion by affirming the Department’s placement decision.

“Under section 388, a person with an interest in a dependent child,” such as a de facto parent, “may petition the [juvenile] court to change, modify, or set aside a previous court order. The petitioning party has the burden of showing, by a preponderance of the evidence, that there is a change of circumstances or new evidence, *and* [that] the proposed modification is in the child’s best interest.” (*In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.) It is undisputed that K.T.’s birth and placement with the

² The juvenile court declined, however, to vacate the de facto parent status of the R.’s.

R.'s constituted a "change in circumstance" within the meaning of section 388. We therefore focus on the "best interest" prong of the analysis.

Once a juvenile court terminates parental rights to a child, it "shall at the same time order the child referred to the State Department of Social Services, county adoption agency, or licensed adoption agency for adoptive placement by the agency," who "shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption . . . is granted." (§ 366.26, subd. (j).) Despite this statutory language, a social services agency's "discretion regarding adoptive and interim foster care placement is not unfettered," as "the Legislature has authorized the juvenile court to review the [agency's] exercise of discretion regarding posttermination placement." (*Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 649–650.) The court reviews the agency's placement decisions for an abuse of discretion, which requires a determination whether the agency "acted arbitrarily and capriciously, considering the minor's best interests. [Citation.] Absent a showing that [the agency's] placement decision is patently absurd or unquestionably not in the minor's best interests, the juvenile court may not interfere and disapprove of the minor's placement, thereby requiring that the minor be relocated to another home." (*Department of Social Services v. Superior Court* (1997) 58 Cal.App.4th 721, 734.) In turn, we review the juvenile court's order denying the section 388 petition to change T.N.'s placement for an abuse of discretion. (*In re Daniel C., supra*, 141 Cal.App.4th at pp. 1444–1445.)³

The R.'s argue that they "demonstrated that returning [T.N.] to their care would be in his best interests" because (1) it would allow him to grow up with his biological brother, (2) it would permit him to maintain a connection with at least part of his

³ There is some uncertainty in the case law as to "whether a section 388 modification petition is the correct procedural vehicle to challenge [an agency's] placement decision" after parental rights have been terminated, since the goal is not actually to modify a court order. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1072, fn. 14.) We will assume without deciding that the R.'s properly challenged the placement decision through a section 388 petition, as the Department does not argue otherwise.

biological family, and (3) the evidence showed they were good people who could competently care for T.N. (Some capitalization omitted.) We accept the truth of these points, and we recognize that the Legislature has expressed an intent that sibling relationships be maintained when possible. (See § 16002, subd. (a).) But it does not follow that the Department's decision to keep T.N. in his current placement after K.T.'s birth instead of placing him with the R.'s was "patently absurd" or "unquestionably not in [his] best interests," much less that the juvenile court abused its discretion in determining otherwise. (*Department of Social Services v. Superior Court*, *supra*, 58 Cal.App.4th at p. 734.)

In its response to the section 388 petition, the Department argued that "[t]he fundamental and greatest need of 25-month old [T.N.] is a secure parent-child relationship and continued attachment with caregivers equipped to meet his needs now and into the future." In support of this position, it presented a report from the adoption agency to support its conclusion that T.N.'s current placement with his prospective adoptive parents should not be disrupted. As summarized by the Department, the report established that T.N. "continued to benefit from being cared for almost exclusively by his adoptive parents" and was progressing in the critical "medical, developmental, educational, and mental/emotional" spheres. In addition, it was observed that T.N. "clearly prefers interaction with his prospective adoptive parents to any other adult caregivers, . . . a great deal of progress has been made in helping to ensure that [T.N.] is not confused about who his primary caregivers are, and progress has been made to facilitate secure attachment with these specific caregivers."

It was not error for the trial court to give considerable weight to this information. We agree with the Department that the R.'s are in effect asking this court to reevaluate the evidence and make a different determination about what is in T.N.'s best interest, which we cannot do.

III. DISPOSITION

The juvenile court's December 3, 2018 order is affirmed.

Humes, P.J.

WE CONCUR:

Margulies, J.

Banke, J.

In re T.N. A155952